

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HOWARD L. THOMAS,

Plaintiff,

V.

CIVIL ACTION NO. 5:21-CV-00640

SCOTT DALE CLARK; ANGELA CLARK; WILSON COUNTY, TEXAS; DEPUTY ROY ASHTON, in his Individual and Official Capacity as Deputy Sheriff of Wilson County, Texas; and SHERIFF JIM STEWART, in his Individual and Official Capacity as a Deputy Sheriff of Wilson County, Texas, and as successor in interest to Sheriff Joe Tackett, in his Individual and Official Capacity as Sheriff of Wilson County, Texas,

Defendants.

DEFENDANT FRANK ASHTON'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367(a), 1441, and 1446, Defendant Frank Ashton (“Ashton”)¹ files this Notice of Removal, and hereby removes the above-entitled lawsuit from the 81st Judicial District Court of Wilson County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division. As grounds for removal, Ashton shows the following:

¹ Frank Ashton is erroneously named “Roy Ashton” in the state court case caption.

I.
COMPLIANCE WITH 28 U.S.C. § 1446(a)

1. Pursuant to 28 U.S.C. § 1446(a), Ashton includes the following index of matters being filed with this Notice of Removal:

- Exhibit A:** Plaintiff's Original Petition
- Exhibit B:** Wilson County, Texas District Court's Docket Book Report for Cause No. CVW2100341
- Exhibit C:** Affidavit of Service on Frank Ashton
- Exhibit D:** Affidavit of Service on Jim Stewart
- Exhibit E:** Affidavit of Service on Wilson County, Texas
- Exhibit F:** Scott Dale Clark and Angela Clark's Original Answer
- Exhibit G:** Scott Dale Clark and Angela Clark's Consent to Removal
- Exhibit H:** Docket Transactions for Cause No. CVW2100341
- Exhibit I:** Request for Process for Angela Clark, Frank Ashton, Jim Stewart, and Wilson County, Texas
- Exhibit J:** Affidavit of Service on Scott Dale Clark and Angela Clark

II.
STATE COURT ACTION

2. Plaintiff Howard L. Thomas filed his Original Petition on May 17, 2021 against Defendants Scott Dale Clark, Angela Clark ("Clark Defendants"), Wilson County, Texas, Deputy Frank Ashton, and Sheriff Jim Stewart ("County Defendants"). *See* Ex. A, Pl.'s Original Pet. The action is styled *Howard L. Thomas v. Scott Dale Clark, Angela*

Clark, Wilson County, Texas, Deputy Roy Ashton, in his Individual and Official Capacity as Deputy Sheriff of Wilson County, Texas; and Sheriff Jim Stewart, in his Individual and Official Capacity as a Deputy Sheriff of Wilson County, Texas; and as successor in interest to Sheriff Joe Tackett, in his Individual and Official Capacity as Sheriff of Wilson County, Texas. It was assigned cause number CVW2100341 in the 81st Judicial District Court of Wilson County, Texas.

3. In his Original Petition, Plaintiff asserts federal claims against the County Defendants and state claims against the Clark Defendants. *Id.* ¶¶ 5.0 – 8.4. Specifically, Plaintiff requests declaratory and injunctive relief against the Clark Defendants, *id.* ¶¶ 5.0 – 6.5, and brings a claim for malicious prosecution against the Clark Defendants, *id.* ¶¶ 7.0 – 7.3. Plaintiff further brings a claim for the alleged violations of his constitutional rights (pursuant to 42 U.S.C. § 1983) against the County Defendants. *Id.* ¶¶ 8.0 – 8.4. Specifically, Plaintiff alleges the County violated his rights under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. *Id.* The County Defendants deny Plaintiff’s allegations and allege Plaintiff’s civil action lacks merit.

III.

BASIS FOR SUBJECT MATTER JURISDICTION

A. Federal Question Jurisdiction over Claims against County Defendants

4. Ashton removes this action pursuant to 28 U.S.C. § 1441(a). This Court has jurisdiction based on 28 U.S.C. § 1331 because Plaintiff’s claim against the County Defendants is a “civil action[] arising under the . . . laws . . . of the United States.” Specifically, Plaintiff asserts the following federal causes of action pursuant to 42 U.S.C.

§ 1983: wrongful arrest; false imprisonment; adoption of the “Dial-an-Arrest” policy; adoption and execution of the “Cooling-Off” policy; the failure to provide adequate training; and the failure to properly supervise. Ex. A, ¶¶ 8.0 – 8.4. Consequently, this Court has jurisdiction under Section 1441, and removal is proper.

B. Supplemental Jurisdiction over Claims against Clark Defendants

5. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over Plaintiff’s state law claims against Clark Defendants. That section provides “district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). Here, the Court has supplemental jurisdiction because Plaintiff’s state law claims arise from “the same case or controversy” that is at issue in the federal claims—Plaintiff’s various interactions with the Defendants and his malicious prosecution claim that is intertwined with his federal claims.

IV.
PROCEDURAL REQUIREMENTS OF REMOVAL

A. Timeliness

6. This Notice of Removal has been timely filed within thirty days of service of the Original Petition on Ashton. Ex. C. *Cf.* 28 U.S.C. § 1446(b)(1), (b)(2)(B).

B. Venue

7. Plaintiff brought this action in the 81st Judicial District Court of Wilson County, Texas—located within the Western District of Texas, San Antonio Division. 28

U.S.C. § 124(d)(4). Accordingly, venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

C. Compliance with Notice Requirements

8. Pursuant to 28 U.S.C. § 1446(d), Ashton will promptly give written notice of the filing of this Notice to Plaintiff, as well as promptly file a copy of the Notice of Removal with the clerk for the 81st Judicial District Court of Wilson County, Texas.

D. Filing Fee

9. A filing fee of \$402 has been tendered to the Clerk of the United States District Court for the Western District of Texas, San Antonio Division.

E. Consent to Removal

10. The undersigned counsel represents all County Defendants and confirms Wilson County and Jim Stewart consent to the removal. *Cf.* 28 U.S.C. § 1446(b)(2)(A).

11. The Clark Defendants also consent to the removal. *See* Ex. G.

F. Jury Demand

12. Plaintiff previously demanded a jury trial in state court, Ex. A ¶ 10.1, and Ashton demands a jury trial herein. *Cf.* Fed. R. Civ. P. 81(c)(3)(A), (B)(i).

G. Request for Leave to Amend

13. In the event this Court subsequently identifies a defect in this Notice of Removal, Ashton respectfully requests the Court grant Ashton leave to amend this Notice and cure the defect. *See, e.g., Silva v. Degs Wind I, LLC*, No. CV 1:13-247, 2015 WL 12743775, at *2-3 (S.D. Tex. Jan. 29, 2015); *Bailon v. Landstar Ranger, Inc.*, 3:16-CV-1022-L, 2016 WL 6565950, at *4 (N.D. Tex. Nov. 3, 2016) (citing *In re Allstate Ins. Co.*,

8 F.3d 219, 221 & n.4 (5th Cir. 1993)) (procedural defects may be cured by the filing of an amended notice of removal); *Lafayette City-Parish Consol. Government v. Chain Elec. Co.*, No. 11-1247, 2011 WL 4499589, at *7 (W.D. La. Sept. 23, 2011) (explaining “defendants may freely amend the notice of removal required by section 1446(b).”).

V.
CONCLUSION

Based on the foregoing, Ashton removes this case to this Court. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required under 28 U.S.C. § 1446(a).

Respectfully submitted and signed pursuant to
Federal Rule of Civil Procedure 11,

By: /s/ Ben Zinnecker
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ATTORNEYS FOR DEFENDANTS WILSON
COUNTY, TEXAS, FRANK ASHTON, AND
JIM STEWART

CERTIFICATE OF SERVICE

On July 7, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the following counsel of record electronically and/or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) and/or 28 U.S.C. § 1446(d).

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